

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH R. COMEY III,
GERALD V. NELSON and LEE K. GILMER

Appeal No. 95-3424
Application 08/143,598¹

ON BRIEF

Before CAROFF, PAK and OWENS, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION

This decision on appeal relates to the final rejection of claims 1-8, all the claims pending in the involved application.

¹ Application for patent filed November 1, 1993.

The claims on appeal are directed to an apparatus for collecting an airborne release of hydrogen fluoride (HF) from so-called "hydrogen fluoride (HF) utilizing means". According to appellants' specification, such means can include, inter alia, any of a number of vessels associated with an alkylation system. The claimed apparatus is designed to contain or mitigate an accidental airborne release or leak of HF from such process vessels.

Appellants acknowledge on page 3 of their brief that the claims on appeal stand or fall together. Accordingly, we will limit our consideration to claim 1, the sole independent claim, which reads as follows:

1. Environmental safety apparatus for collecting an airborne release of hydrogen fluoride from hydrogen fluoride utilizing means comprising:

a containment baffle defining a volume sufficient to substantially enclose said hydrogen fluoride utilizing means;

at least one hydrogen fluoride detecting means mounted within said containment baffle;

flood means to substantially flood said containment baffle with an aqueous liquid;

means responsive to said detecting means to activate said flood means; and

means to receive said aqueous liquid from said containment baffle.

The examiner relies upon the following prior art references as evidence of obviousness:

Bajek et al (Bajek)	3,751,229	Aug. 07, 1973
Hachmuth et al (Hachmuth)	4,677,244	Jun. 30, 1987
Partridge, Jr. et al (Partridge)	5,277,881	Jan. 11, 1994
		(filed Sep. 14, 1992)

Schatz

5,286,456

Feb. 15, 1994
(filed Sep. 24, 1992)

The following rejections are before us for consideration:

I. Claims 1-8 stand rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

II. Claims 1-4 and 6-8 stand rejected under 35 U.S.C. § 103 for obviousness in view of Schatz alone or, alternatively, in view of Partridge taken in combination with Schatz.²

III. Claim 5 stands rejected under 35 U.S.C. § 103 for obviousness in view of either Schatz alone, or in view of the combination of Partridge with Schatz, as applied to claims 1-4 and 6-8, and further in view of Bajek or Hachmuth.

We reverse the 35 U.S.C. § 112 rejection essentially for the reasons given in appellants' brief. However, we shall sustain each of the 35 U.S.C. § 103 rejections essentially for the reasons set forth in the examiner's answer.

As for the 35 U.S.C. § 112 rejection, since we are in substantial agreement with appellants' position, we adopt that position as our own. For emphasis, we disagree with the examiner's conclusion that it is unclear as to whether the "hydrogen fluoride utilizing means" is a positively recited element of the claim. In our view, it is clear that the HF utilizing means is not recited as an element of the claimed

² We note for the record that the examiner erroneously included a canceled claim, claim 9, in listing the claims rejected over the combination of Partridge and Schatz.

apparatus. Rather, the "means" at issue is recited only in terms of an intended use of the claimed apparatus, and to define the volume of its containment baffle element.

Furthermore, the examiner's concern with regard to the position of the "flood means" relative to the baffle is unjustified. In our view, the claims read on positioning flood means either inside or outside of the baffle, or both inside and outside. For instance, according to the specification (page 9), we note that a flood line 156a may be connected to an internal fog nozzle 157, or a flood line 156b may be connected to an external spray head 158. Claims are to be given their broadest reasonable interpretation consistent with the specification. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). The fact that the claims are broad in scope, does not make them indefinite.

As for the rejections under 35 U.S.C. § 103, we have carefully considered the entire record in light of appellants' position as well as that of the examiner. In doing so, we conclude that the examiner has established a prima facie case of obviousness, and appellants' have failed to present any persuasive countervailing argument or evidence by way of rebuttal.

As pointed out by the examiner, Schatz discloses a containment apparatus for mitigation of any HF leaks in an alkylation system. The Schatz disclosure embraces, inter alia, a containment baffle (an annular impact plate 30), HF detecting means (HF detectors 96, 97), flood means (water sprays 93), means responsive to the detecting means to activate the flood means (computer 91), and means for

collecting run-off (basin 33). It is noteworthy that Schatz also contemplates an embodiment where the impact plate encases or surrounds "at least a substantial portion of a vessel or conduit" (see col. 5, line 44-52 and Fig. 4). While Schatz is silent with regard to whether the HF detectors are to be mounted within or outside of the containment baffle, we agree with the examiner that placement within the containment baffle would have been an obvious choice in order to maximize proximity to a potential leak source and thereby enhance detection of any HF leak. An ordinary artisan, in addition to being versed in the art, is presumed to have a modicum of common sense. In this regard, see In re Sovish, 769 F.2d 738 742-43, 226 USPQ 771, 774 (Fed. Cir. 1985); and In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969).

With regard to appellants' argument that Schatz also does not suggest locating the flood means (water sprays 93) within the containment baffle, we agree with the examiner that this argument is not commensurate with the scope of the claims. In other words, as we found with respect to the 35 U.S.C. § 112 rejection, the instant claims do not require that the flood means be located within the baffle.

Similar considerations apply with respect to the rejections involving Partridge as the primary reference. To wit, if one were to apply the teachings of Schatz to Partridge, it would have been an obvious matter of routine skill to locate HF detectors within the containment baffles of Partridge in order to enhance detection of any HF leak originating from a source surrounded by the baffles. Again,

Schatz also teaches activation of flood means in response to a signal from the HF detectors and, appellants' arguments to the contrary notwithstanding, the instant claims include no requirement that the flooding/spraying occur within the confines of the containment baffles. Accordingly, the instant claims are not patentably distinguishable from the combined teachings of Partridge and Schatz.

With regard to the separate rejections of claim 5, we note that Schatz (col. 5, line 27) suggests use of a secondary temperature detector and appellants admit on page 8 of their brief that it would have been obvious to use a thermocouple as a temperature detector. Accordingly, there is no dispute with regard to the obviousness of the feature recited in claim 5, and no need to consider the prior art references (Bajek, Hachmuth) cited by the examiner to show this feature.

For the foregoing reasons, the decision of the examiner is affirmed based upon the provisions of 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

MARC L. CAROFF)

Appeal No. 95-3424
Application 08/143,598

Administrative Patent Judge)	
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CHUNG K. PAK)	
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